

REMARKS

Claims 155-170 are pending. Claims 163-170 are allowed. Claims 155-162 are currently rejected.

Applicants note with appreciation that the rejection of claims 155-170 under 35 U.S.C. § 112, first paragraph, has been reconsidered and withdrawn. Applicants further note with appreciation that the rejection of claims 162, 164, 166-170 under 35 U.S.C. § 103(a) as unpatentable over Riley (US 5,976,568) in view of Wakat (US 6,054,128) has been reconsidered and withdrawn. Finally, Applicants note with appreciation that the rejection of claim 165 under 35 U.S.C. § 103(a) as unpatentable over Riley (US 5,976,568) in view of Wakat (US 6,054,128) in further view of Anderson (US 5,278,329) has also been reconsidered and withdrawn.

The proposed amendment to claim 155 adds the phrase “wherein said composition is free of any other added minerals and any other added vitamins.” The proposed amendment to the pending claim is made to more clearly define the inventions and places them in line with allowed claim 163. It is submitted that the amendment introduces no new matter and entry of the same is respectfully requested. By this amendment, the Applicants do not acquiesce to the propriety of any of the Examiner’s rejections and do not disclaim any subject matter to which the Applicants are entitled. *Cf. Warner Jenkinson Co. v. Hilton-Davis Chem. Co.*, 41 U.S.P.Q.2d 1865 (U.S. 1997).

In response to claims 163-170 being allowable (Office Action of 16 November 2004 at page 1), Applicants respectfully request entry and rejoinder of claims 88-116, withdrawn from consideration in response to the Restriction Requirement mailed 22 January 2003. The proposed amendments to claims 53, 88, 89, 102, 103, 107, 108, 112 and 113 make these claims depend from proposed amended claim 155 or allowed claim 163, and more closely reflect the language of these claims. By these amendments, the Applicants do not acquiesce to the propriety of any of the Examiner’s rejections and do not disclaim any subject matter to which the Applicants are entitled. *Cf. Warner Jenkinson Co. v. Hilton-Davis Chem. Co.*, 41 U.S.P.Q.2d 1865 (U.S. 1997).

I. REJECTIONS UNDER 35 U.S.C. § 103(a)

A. Claims 155, 156, 158-162 are rejected under 35 U.S.C. § 103(a) over Riley

The Examiner has maintained his rejection of claims 155, 156 and 158-162 under 35 U.S.C. § 103(a) as being unpatentable over Riley (US 5,976,568). Office Action of 16 November 2004 at page 2. Applicants respectfully traverse.

To maintain a proper rejection under 35 U.S.C. § 103, the USPTO must meet four conditions to establish a *prima facie* case of obviousness. First, the USPTO must show that the prior art suggested to those of ordinary skill in the art that they should make the claimed composition or device or carry out the claimed process. Second, the USPTO must show that the prior art would have provided one of ordinary skill in the art with a reasonable expectation of success. Both the suggestion and the reasonable expectation of success must be adequately founded in the prior art and not in an applicant's disclosure. Third, the prior art must teach or suggest all the claim limitations. *In re Vaeck*, 20 U.S.P.Q.2d 1438, 1442 (Fed. Cir. 1991). Fourth, if an obviousness rejection is based on some combination of prior art references, the USPTO must show the suggestion, teaching, or motivation to combine the prior art references. *In re Dembiczak*, 50 U.S.P.Q.2d 1614, 1617 (Fed. Cir. 1999).

The Examiner admits that Riley does not teach expressly a composition consisting of the ingredients of claims 155, 156, 158-162. Office Action of 16 November 2004 at page 2. Riley relates to a composition containing beta-carotene, alpha carotene, lutein, lycopene, zeaxanthin, vitamin A, vitamin B1, vitamin B2, niacinamide, pantothenic acid, vitamin B6, biotin, folic acid, vitamin B12, vitamin C, vitamin D3, vitamin E, calcium, chromium, copper, iron, magnesium, manganese, selenium, zinc and odorless garlic. Riley at Table II. Riley does not teach or suggest a composition comprising minerals consisting of selenium and zinc, and vitamins consisting of vitamin C, vitamin E, folic acid, biotin, pantothenic acid, niacin, pyridoxine, riboflavin, cyanocobalamin and thiamine, wherein the composition is free of any other added minerals and any other added vitamins, as set forth in proposed amended independent claim 155. Neither does Riley provide any expectation of success with such a composition.

Accordingly, Applicants respectfully request that the present rejection of claims 155, 156 and 158-162 under 35 U.S.C. § 103(a) be reconsidered and withdrawn.

B. Claim 157 is rejected under 35 U.S.C. § 103(a) over Riley in light of Wakat and in further light of Anderson

The Examiner has maintained his rejection of claim 157 as unpatentable over Riley (US 5,976,568) in light of Wakat (US 6,054,128) in further view of Anderson (US 5,278,329). Office Action of 16 November 2004 at page 3. Applicants respectfully traverse.

As stated above, Riley does not teach or suggest the compositions of proposed amended claim 155, from which claim 157 depends. Wakat relates to a composition containing beta-carotene, vitamin B6, vitamin B12, folic acid, vitamin C, vitamin E, selenium, catechin, quercetin, procyanidin-cyanidin mixture, hawthorn extract and *Garcinia carbogia* extract. Wakat at Table I. Anderson relates to substantially pure 1:1 L-form zinc methionine complex salts. Anderson at Abstract. Neither Wakat nor Anderson, singularly or collectively, remedy the deficiencies of Riley and these references do not provide any teaching or suggestion that one of skill in the art would combine with Riley to make a composition comprising minerals consisting of selenium and zinc; and vitamins consisting of vitamin C, vitamin E, folic acid, biotin, panththenic acid, niacin, pyridoxine, riboflavin, cyanocobalamin and thiamine, wherein said composition is free of any other added minerals and any other added vitamins, and wherein said zinc comprises zinc L-methionine. Neither do Riley, Wakat nor Anderson provide any expectation of success with such a composition.

Accordingly, Applicants respectfully request that the present rejection of claim 157 under 35 U.S.C. § 103(a) be reconsidered and withdrawn.

II. CONCLUSION

Applicants have properly and fully addressed each of the Examiner's grounds for rejection. Applicants submit that the present application is now in condition for allowance. If the Examiner has any questions or believes further discussion will aid examination and advance prosecution of the application, a telephone call to the undersigned is invited.

If there are any additional fees due in connection with the filing of this amendment, please charge the fees to undersigned's Deposit Account No. 50-1067. If any extensions or fees are not accounted for, such extension is requested and the associated fee should be charged to our deposit account.

Respectfully submitted,

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